IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.546 OF 2004
(For condonation of delay)
AND
CRIMINAL APPLICATION NO.547 OF 2004
(For leave to appeal)
IN
CRIMINAL APPEAL NO. OF 2004
AND
CRIMINAL APPEAL NO. OF 2004

Mahabaleshwar Giristhan
Municipal Council. ... Applicants.
V/s
The State of Maharashtra
and two others. ... Respondnts.

Mr. Ganesh Gole, advocate for the applicants.

Mr. Ms. S. Matti, advocate for respondent Nos. 2 and 3.

Mr. D.P. Adsule, APP for the respondent No.1 - State.

CORAM: V.M.KANADE,J.
DATE: 8th October, 2004
P.C.

1. Heard the learned Counsel appearing on behalf of the applicant, learned APP for respondent No.1 - State and the learned Counsel appearing on behalf of respondent Nos. 2 and 3.

2. Delay in filing the Criminal Application for leave to appeal is condoned for the reasons stated in the application. Leave is granted. Appeal is admitted.

3. By consent, appeal is taken up for final hearing forthwith.

4. The Trial Court has dismissed the Complaint by order dated 4/11/2003 for want of prosecution as the complainant and his advocate remained absent on the said date. It is submitted on behalf of the applicant that the applicant had gone to Wai Court under the assumption/belief that the matter would be heard at Wai. It is submitted that, unfortunately, on that date, the Court had assembled at Mahabaleshwar and, therefore, by that time the complainant came back from Wai, the complaint was dismissed.

5. The learned Counsel appearing on behalf of the respondents vehemently opposed the said submissions made by the learned Counsel appearing on behalf of the complainant. She has submitted that the Municipal Council never had an intention of prosecuting and proceeding with the trial and had repeatedly remained absent and, as such, the Trial Court has rightly rejected the said complaint. It is further submitted that there is also delay in filing this appeal and, therefore, the delay should not be condoned. The learned Counsel relied upon the Judgments of the Apex Court as also judgments of this Court in support of her submissions. She submitted that in view of the ratio laid down in the said judgments, even if the

State Government or any local authority files an appeal, delay should not be condoned unless each and every day's delay is explained. She has submitted that the Municipal Council has not explained the delay. She has further taken me through the roznama which shows that the complainant has remained absent on more than one day. She has, therefore, submitted that this Court should not interfere with the said order of dismissal while exercising its jurisdiction under section 378 of the Criminal Procedure Code.

6. I have perused the roznama and also the order passed by the Trial Court. So far as the submissions made by the learned Counsel appearing on behalf of the respondents are concerned, in the present case, delay is of 25 days. This Court as well as the Apex Court has also taken a view that as far as possible the complaint should be decided on its own merits particularly when there is an evidence to show that the complainant had been diligent. The roznama shows that the complainant had appeared on other dates. Therefore, it cannot be said that the complainant was not diligent during the entire period. The submissions of the learned Counsel for the respondents, therefore, cannot be accepted. It is no doubt true that the complainant has remained absent on

the said date. However, considering the fact that the cause shown by the complainant is that he had gone to Wai assuming that the Court which normally sits at Wai would be hearing the application at the said place. He, therefore, could not remain present at Mahabaleshwar. It is an admitted position that on few occasions, the Court at Wai also sits at Mahabaleshwar at periodic intervals. It is possible, therefore, that on that count the complainant could not remain present. The complaint, therefore, which is dismissed for default will have to be restored with a direction to the Trial Court to decide the same on merits. The impugned order of dismissal of the complaint is, therefore, set aside and quashed. Accordingly the complaint is restored with a direction to the Trial Court to decide the same on merits. The complainant is directed to co-operate with the Trial Court. In the result, the delay is condoned and the appeal is allowed.

V.M. KANADE, J.